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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/266,155 03/10/99 PRICE

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EXAMINER

IM52/0522

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ART UNIT

PAPER NUMBER

1771

DATE MAILED:

05/22/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/266,155

Applicant(s)

Price et al.

Examiner

Cheryl Juska

Art Unit

1771



– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Mar 8, 2001
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 7-15 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirements.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☒ The proposed drawing correction filed on Mar 8, 2001 is: a) ☒ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20) ☐ Other:

Art Unit: 1771

## **DETAILED ACTION**

### ***Response to Amendment***

1. Amendment A, submitted as Paper No. 9 on march 8, 2001, has been entered. The specification has been amended as requested. Claims 1-6 have been cancelled and replaced with new claims 7-15. The cancellation of claims 1-6 renders moot the 35 USC 112 and 35 USC 102 rejections set forth in sections 7-11 of the last Office Action.

### ***Drawings***

2. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on March 8, 2001, have been approved by the Examiner.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 9, 13, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,112,161 issued to Sorrells.

Art Unit: 1771

Claims 9 and 13 are drawn to laminated carpet panel and a textile laminate, respectively, comprising a tufted backing layer and a layer of polymeric material disposed in the tuft backloops and wherein said polymeric material defines a plurality of voids that cause the carpet panel to be permeable. Claim 14 limits the laminate of claims 13 to the inclusion of a secondary backing.

Sorrells discloses a tufted carpet comprising a primary backing with tufts, a hot melt adhesive, and a secondary backing (abstract). The carpet is perforated in order to provide breathability (abstract and Figure 1). Thus, Sorrells anticipates said claims in that the hot-melt adhesive is a polymeric material with voids which create permeability.

5. Claims 9, 13, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,661,380 issued to Tillotson.

Tillotson discloses a method for laminating a secondary carpet backing to a tufted primary backing (abstract). The method provides for a uniform but discontinuous layer of adhesive for bonding the two backings, wherein the adhesive is deposited only on the "high spots" of the backing material (col. 1, lines 61-65 and col. 6, lines 29-35). Thus, Tillotson anticipates the presently claimed invention in that the adhesive layer is a discontinuous polymeric material, which inherently will provide breathability to the carpet. Therefore, claims 9, 13, and 14 are rejected.

***Claim Rejections - 35 USC § 102/103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 1771

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 7, 8, 10-12, and 15 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over the cited Sorrells patent.

Claims 7, 8, 10-12, and 15 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over the cited Tillotson patent.

Independent claim 7 differs from claims 9 and 13 in that a specific permeability value is claimed. Claims 10 and 15 also recited said permeability value. Claims 8 and 11 limit the laminates of claims 7 and 9, respectively, to the inclusion of a secondary backing. Claim 12 limits the permeability to being measured by concentric airflow equipment.

Although neither Sorrells nor Tillotson teach specific permeabilities, it is reasonable to presume the claimed permeability is inherent to the inventions of Sorrells and Tillotson. Support for presumption is found in the use of like materials (i.e., tufted primary backings, discontinuous polymeric adhesive layers, and a secondary backing) and in like objectives (i.e., to provide a breathable carpet). The burden is upon Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, it would have been obvious to one of ordinary skill in the art to alter the inventions in order to obtain a desired permeability. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 205 USPQ 215. Therefore, claims 7, 8, 10-12, and 15 are rejected as being obvious over the cited prior art.

Art Unit: 1771

*Conclusion*

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is (703) 305-4472. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached at (703) 308-2414. The official fax number for this TC 1700 is (703) 872-9310 and, for After Final communications, (703) 872-9311.

cj

May 18, 2001

  
CHERYL JUSKA  
PATENT EXAMINER